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No. 98-5864  
A-186

(4)

IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1997



TOMMY DAVID STRICKLER,

Petitioner,

v.

RONALD J. ANGELONE, DIRECTOR,

Respondent.

On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Fourth Circuit and Application  
for Stay of Execution

DIRECTOR'S BRIEF IN OPPOSITION

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59 PD

## QUESTION PRESENTED

In a case where it is undisputed that the petitioner never raised his defaulted "exculpatory evidence" claim in state court, where the uncontradicted evidence established that at least one of the petitioner's trial attorneys was fully aware of the allegedly non-disclosed "exculpatory evidence" and, where the evidence in question is not material as a matter of law, should this Court grant certiorari to resolve a supposed split in circuits on whether there is a "due diligence" exception to the rule of Brady v. Maryland, 373 U.S. 83 (1963)?

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DIRECTOR'S BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

*1. Case History*

On January 5, 1990, in Augusta County, Virginia, Tommy David Strickler abducted, brutally beat, raped and then murdered Leanne Whitlock by dropping a 69-pound boulder on her head four times, crushing her skull.

Strickler was convicted by a jury in Augusta County of the capital murder of Whitlock, abduction and robbery. After a separate sentencing proceeding, the jury fixed Strickler's

punishment at death for the capital murder, finding both a probability that Strickler would constitute a continuing serious threat to society and that Strickler's conduct in committing the murder was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind or aggravated battery. See Va. Code § 19.2-264.4. After considering a post-sentencing report, as required by Virginia Code § 19.2-215, the trial court imposed sentence in accordance with the jury's verdict on September 19, 1990. The Supreme Court of Virginia unanimously affirmed Strickler's convictions and sentences on April 19, 1991. Strickler v. Commonwealth, 241 Va. 482, 404 S.E.2d 227 (1991). This Court denied Strickler's petition for certiorari on November 4, 1991. Strickler v. Virginia, 502 U.S. 944 (1981).

On December 5, 1991, the Augusta County Circuit Court appointed counsel to represent Strickler in state habeas corpus proceedings. Nine months later, on or about September 1, 1992, Strickler filed a petition for a writ of habeas corpus in the Augusta Circuit Court. Strickler did not seek discovery in the state habeas court, see Rule 4:1(b)(5), Rules of the Supreme Court of Virginia, and his petition did not contain an "exculpatory evidence" claim. The Warden filed a motion to dismiss and, after oral argument, the petition was denied. Strickler's petition for appeal to the Virginia Supreme Court was granted, limited to his Assignment of Error No. 9.<sup>1</sup>

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<sup>1</sup> Assignment of Error 9 read:

The trial court erred in not vacating the capital murder conviction despite its finding that Instruction 1 given at petitioner's trial was defective because of its inclusion in the definition of capital murder an underlying offense which does not by statute support a conviction of capital murder.



After full briefing and oral argument, the Virginia Supreme Court ultimately ruled that the substantive claim regarding the propriety of a jury instruction was barred under Slayton v. Parrigan, 215 Va. 27, 205 S.E.2d 680 (1974), cert. denied, 419 U.S. 1108 (1975), because it had not been raised at trial and on direct appeal. Strickler's claim of ineffective assistance of counsel, based on the conduct complained of in Assignment of Error 9, was rejected under Strickland v. Washington, 466 U.S. 668 (1984). In light of the overwhelming evidence that Strickler murdered Whitlock during the commission of a robbery while armed with a deadly weapon, the Virginia Supreme Court concluded that Strickler had failed to demonstrate that he had been prejudiced by counsel's alleged error. Strickler v. Murray, 249 Va. 120, 452 S.E.2d 648 (1991). Strickler's subsequent petition for a writ of certiorari in this Court was denied on October 2, 1995. Strickler v. Angelone, 116 S.Ct. 146 (1995).

In March, 1996, Strickler filed a § 2254 petition in the United States District Court for the Eastern District of Virginia, and he amended his petition in May, 1996. The Warden filed a motion to dismiss in June, 1996.

On December 10, 1996, the district court dismissed the bulk of Strickler's claims but ordered an evidentiary hearing on eight remaining claims. In response to the Warden's motion to reconsider, the district court dismissed all of Strickler's claims except an exculpatory evidence claim, an "unfair trial claim" and numerous allegations of ineffective assistance of counsel. These remaining claims were set for an evidentiary hearing to begin on October 3, 1997. Well

before the evidentiary hearing, however, both parties filed motions for summary judgment, accompanied by supporting documents, on the exculpatory evidence and "unfair trial" claims.<sup>2</sup>

On October 2, 1997, the day before the scheduled hearing, the parties appeared before the district court. At that time, Strickler expressly withdrew, with prejudice, his allegations of ineffective assistance of counsel and asked the court to decide the exculpatory evidence/unfair trial claim on the cross-motions for summary judgment. Consequently, the district court canceled the evidentiary hearing with the agreement of both parties. On October 16, 1997, the district court granted Strickler's motion for summary judgment, denied the Warden's cross-motion for partial summary judgment and granted Strickler habeas corpus relief on his "exculpatory evidence" and "unfair trial" claims.

The Commonwealth appealed to the United States Court of Appeals for the Fourth Circuit. After full briefing and oral argument, the Fourth Circuit, in an unpublished per curiam opinion, reversed the district court's award of habeas corpus relief on June 17, 1998. Strickler v. Pruett, 1998 U.S. App. LEXIS 12805 (4th Cir. 1998). On July 15, 1998, the Fourth Circuit denied Strickler's petition for rehearing. Strickler's motion for stay of execution and motion to stay the Fourth Circuit's mandate were denied and the mandate issued on July 30, 1998.

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<sup>2</sup> The alleged exculpatory material in this case consists of eight items which, Strickler contends, could have been used to impeach Commonwealth's witness Anne Stolfus. These documents were obtained by Strickler during discovery which he requested for the first time in the district court. Inexplicably, Strickler has failed to provide this Court with copies of the documents. They are included, however, in the Respondent's Appendix. (RA 2-20).

On July 23, 1998, pursuant to Virginia Code § 53.1-232.1, the state trial court set Strickler's execution for September 16, 1998.

## 2. *Strickler's crimes.*

The facts surrounding Strickler's murder of Leanne Whitlock were summarized by the Virginia Supreme Court as follows:

On January 5, 1990, Leanne Whitlock (Leanne), a sophomore at James Madison University, borrowed a 1986 Mercury Lynx from her boyfriend, who worked at the Valley Mall in Harrisonburg. The car was clean at the time. Leanne left the mall at 4:30 p.m. and, with her roommate, Sonja Lamb, drove to a store, where Leanne had a part-time job, to pick up a paycheck. Leanne dropped Sonja off about 6:45 p.m. and left, alone, to return the borrowed car to her boyfriend.

Anne Stolfus was in a store at Valley Mall with her daughter at 6:00 p.m. when Strickler, Ronald Henderson, and a blond woman entered. Strickler was behaving in such a loud, rude, and boisterous manner that she watched him with some apprehension. He was dressed in casual, but clean, clothing.

As Mrs. Stolfus was leaving the mall soon thereafter, she saw Leanne Whitlock driving the blue Mercury. Suddenly, Strickler ran out of the mall and addressed the occupant of a nearby van, angrily pounding on the van's door. Strickler also ran up to the occupants of a pick-up truck. He then turned to the Mercury that Leanne was driving, which was stopped in traffic, and pounded on the passenger side window. Leanne leaned over as if to lock the door, but Strickler wrenched the door open and jumped into the car, facing Leanne. She appeared to try to push him away, but he opened the door and beckoned Henderson and the blond woman to join him.

Leanne accelerated and began sounding blasts on the horn. Strickler struck her repeatedly and she ceased to sound the horn and stopped the car. Henderson and the blond woman entered the back seat. Henderson handed his coat to Strickler, who put it on the floor of the car and "fiddled with it" for a long time. He then sat up, faced Leanne, and the other two sat back and relaxed. Mrs.

Stolfus drove up to the car and asked Leanne three times, "[A]re you O.K.?" Leanne seemed "totally frozen." She drove the Mercury away very slowly, and mouthed the word, "help." The Mercury headed east on Route 33, toward Elkton. Mrs. Stolfus' daughter wrote down its license number, West Virginia NKA 243.

About 7:30 p.m., Kurt D. Massie and a friend were driving north on Route 340 near Stuarts Draft. They saw a dirty blue car, southbound, turn off and drive into a field. Strickler was the driver, a white woman was in the front seat with him,\* and another man was in the back seat. Massie thought he saw a fourth occupant in the car.

Between 9:00 and 9:15 p.m., Strickler and Henderson walked into Dice's Inn in Staunton. Strickler was wearing blue jeans which were dirty, bloody, and had a burn mark on them. He gave a wristwatch, later identified as the property of Leanne Whitlock, to a girl named Nancy Simmons.

At 12:30 or 1:00 a.m., Strickler left Dice's Inn with Henderson and a girl named Donna Tudor. The three entered a dirty blue Mercury. Henderson drove the car and Strickler sat in the back seat with Donna. Strickler told her he had bought the car from a man for \$500. He also said that he had been in a fight and had injured his knuckle, which appeared to be lacerated. Strickler and Henderson discussed a "fight" they had had with "it," describing "it" with a racial epithet. Strickler said they had kicked "it" in the back of the head and had used a "rock crusher." He said "it" would give them no more trouble. Strickler was calm during this conversation, but Henderson seemed nervous and kept looking over his shoulder at them. The three drove to Harrisonburg to purchase drugs. During the ride, Henderson nearly collided head-on with an approaching car, and Strickler drew a knife and threatened to stab him.

After dropping Henderson off in Harrisonburg, Donna Tudor went to Virginia Beach with Strickler in the blue Mercury. The two stayed nearly a week, during which time Donna saw Leanne

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\* Leanne was black.



Whitlock's driver's license, identification card, and bank card in the car. Strickler tried to use the bank card in Virginia Beach, and gave Donna a pair of earrings which Leanne had worn on the night of January 5.

Several days later, Donna and Strickler returned to Strickler's mother's home in New Market. Strickler's mother washed his bloodstained blue jeans and his shirt.

Strickler told Donna to hide Leanne's three identification cards in a bag with his T-shirt and other clothing. She deposited these items in an abandoned car behind Strickler's stepfather's house, but later led police to them.

On January 10 or 11, Donna and Strickler abandoned the blue Mercury near a church. Angry after an argument with Donna, Strickler cut up the interior of the car with his hunting knife and also jumped on the car's roof, leaving his footprints.

On January 13, Henderson's frozen wallet was found in the cornfield into which Kurt Massie had seen Strickler drive the blue Mercury on January 5. Later that day, police searched the field and found Leanne's frozen clothing in a pile near the place Henderson's wallet had been found. Leanne's nude, frozen body was found in a nearby wooded area, 300 feet from the highway, buried under two logs and covered with leaves which had been deliberately packed around the logs.

Leanne's hands were extended over her head and crossed at the wrists. She had been dragged by the feet over the ground face down at or shortly after the time of her death, leaving long linear scratches on her upper body. There were lacerations and abrasions on the face, neck, and thighs, some consistent with kicking. Death was caused by four large, crushing, depressed skull fractures with lacerations of the brain. Brain tissue had exuded from the left front of the skull, and bone fragments were imbedded in the brain. Any one of the fractures could have been fatal, but death was not instantaneous.

Near the body, the police found a large rock, weighing 69 pounds, 4 ounces, which was stained with human blood in two places. Despite the very cold weather, the rock was not frozen to the ground.

Beside the rock, there were two indentations in the frozen ground, one four inches deep, the other less. Each indentation contained blood of Leanne's blood type, as well as human hair consistent with Leanne's in all respects. Human hairs were also found on Leanne's frozen clothing. They were Caucasian in origin, and matched Strickler's hair in all respects. Some of them had evidently been torn out of his head by the roots.

Two of the shoe impressions on the roof of the Mercury matched a shoe Strickler was wearing when he was arrested on January 11. Eighteen of his fingerprints, and nine of Donna Tudor's, were identified in the car. A jacket with Henderson's identification was found in the car. It bore at least four human bloodstains. The shirt Strickler had been wearing on January 5 was recovered from the brown bag Donna had hidden. It bore stains from semen consistent with Strickler's, as well as human bloodstains. Vaginal swabs taken from Leanne's body also showed the presence of semen, but its type was not identified.

Strickler v. Commonwealth, 241 Va. 482, 485-488, 404 S.E.2d 227, 230-232 (1991). See 28 U.S.C. § 2254(d); Sumner v. Mata, 449 U.S. 539, 541-549 (1981) (presumption of correctness applies to state appellate court's recitation of historical facts).

#### **REASONS WHY THE WRIT AND A STAY SHOULD BE DENIED**

##### **I. STRICKLER'S "BRADY" CLAIM IS DEFAULTED AND THE "CONFLICT" ARGUMENT HE ADVANCES IS IRRELEVANT.**

Strickler asserts that this Court should grant certiorari and stay his execution to review his claim under Brady v. Maryland, 373 U.S. 83 (1963). According to Strickler, this Court's decision in Kyles v. Whitley, 514 U.S. 419 (1995), abrogated the "due diligence" exception to the general rule that a prosecutor must disclose exculpatory evidence to the defense and that, after Kyles, it is immaterial to a Brady analysis whether the alleged exculpatory evidence could have been

discovered by a reasonably diligent trial attorney. Alternatively, Strickler argues that if the "due diligence" exception survived Kyles, the various courts of appeal are applying the exception inconsistently. Strickler's assertions do not warrant certiorari review for at least two reasons: his Brady claim is defaulted and the resolution of the supposed "conflict" on the "diligence exception" will not affect the validity of either Strickler's conviction or sentence.

*A. Strickler's claim is defaulted.*

Strickler concedes that he never raised his Brady claim in state court. (Petition at 12). The fact of the matter is that Strickler was appointed counsel nine months before he filed his state habeas corpus petition. During that nine months, state habeas counsel undertook to investigate possible claims and on September 1, 1992 filed a 51-page petition on Strickler's behalf. This petition did not include any allegation that the Commonwealth had withheld exculpatory evidence at the time of trial. As the Court of Appeals correctly ruled, Strickler, 1998 U.S. App. LEXIS 12805, \*24-25, Strickler's failure to raise his Brady claim in state court is sufficient to foreclose federal review.<sup>3</sup> See Gray v. Netherland, 116 S.Ct. 2074, 2080 (1996) (Brady claim barred because claim never raised in Virginia courts and state relief no longer available). The decision of the lower court that Strickler's claim is defaulted for failure to present it in

<sup>3</sup> Contrary to Strickler's assertion in footnote 2 of his petition, his Brady claim is not defaulted because of "a change in state habeas law." The change in state law to which Strickler refers occurred in 1995, long after Strickler's state habeas petition had been dismissed. In addition, the Fourth Circuit held that Strickler's claim was defaulted, not because of this change in Virginia post-conviction law, but because Strickler did absolutely nothing to investigate and raise the Brady claim in state court.

accordance with established state procedure is a mere routine, fact-specific application of well-established principles of procedural default and does not warrant certiorari review.

The Fourth Circuit also correctly recognized that Strickler could not establish cause and prejudice to excuse his default. Strickler, 1998 U.S. App. LEXIS 12805, \*25-31. The court ruled that Strickler's Brady claim could have been raised in state habeas through the exercise of reasonable diligence, id. at \*27, and correctly held that Strickler did not exercise the required diligence during the state habeas proceeding. In fact, in the state habeas court Strickler did nothing to investigate this potential claim or any others, and he did not request discovery in the state habeas court.

In the court below, Strickler attempted to shift the blame for his lack of initiative to the Commonwealth by arguing that, under Virginia law, he was not entitled to discovery in state habeas corpus proceedings. The Court of Appeals, however, saw through Strickler's obvious ploy to blame the Commonwealth for his indisputable lack of diligence: "...in state court, Strickler could have followed a procedure similar to the one he followed in federal court: Strickler could have filed a discovery motion seeking to review the Harrisonburg police files." Id. at \*24. See Rule 4.1(b)(5), Rules of the Supreme Court of Virginia (authorizing discovery in state habeas corpus with prior leave of the Court). The lower court's conclusion in this regard was absolutely correct. After all, Strickler certainly was not entitled to discovery in federal habeas corpus. See Rule 6(a), Rules Governing § 2254 Cases in the United States District Court. That simple fact, however, did not prevent Strickler from pursuing a possible Brady violation or filing a discovery motion in the district court. Strickler obtained leave of the district court to conduct discovery, and pled an alleged Brady violation in his initial federal petition for writ of



habeas corpus. Strickler never has offered a persuasive reason why his state habeas counsel could not have done the exact same thing.<sup>4</sup>

**B. The supposed "conflict" is irrelevant.**

The Court of Appeals correctly ruled that, even assuming Strickler's Brady claim was not defaulted, the claim is without merit because the allegedly withheld statements were not "material." Strickler, 1998 U.S. App. LEXIS 12805 at \*31 n.11. Thus, the primary argument upon which Strickler has based his certiorari petition – that there is a split among the federal courts of appeal regarding whether there is a "due diligence" exception to the Brady rule – is

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<sup>4</sup> Strickler's assertion that he "has demonstrated cause based upon the state's uncontested, continuous suppression of the Stolfus documents throughout state court proceedings" (Petition at 31) is categorically false. The State suppressed nothing: Strickler's defense team was aware of the information contained in the Stolfus materials prior to trial. (RA 1). And, as Strickler himself established through discovery in the district court, at least three of the eight items allegedly suppressed (exhibits 2, 7 and 8) were in the Commonwealth's Attorney's file prior to trial and thus were available and known to Strickler pursuant to the Commonwealth's undisputed open file policy. A review of the three documents that Strickler was provided pursuant to the Commonwealth's open file policy establishes that the five documents Strickler allegedly was not provided contain no new information and no information materially different from what is contained in the three disclosed documents.

irrelevant.<sup>5</sup> In other words, Strickler's case clearly is not a proper case to for resolving an alleged "conflict" because no matter how such a "split" were resolved, it would not change the outcome of Strickler's case. Simply put, even if Strickler's claim were not defaulted, federal collateral relief for Strickler would be precluded by the Fourth Circuit's determination that the evidence in question is not material. Id. at \*30 ("[t]he Stolfus materials would have provided little or no help to Strickler in either the guilt or sentencing phases of the trial.").

To begin with, even a cursory examination of the allegedly suppressed documents establishes that each one of them, on its face, was wholly inculpatory. (RA 2-20). Indeed, Strickler has never claimed otherwise. Instead, his argument that the evidence was material has always been founded entirely upon his assertion that claimed inconsistencies between each of these statements and Stolfus' testimony rendered them exculpatory. Whatever minor variations existed between Stolfus' various accounts, however, hardly required their production. Any

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<sup>5</sup> Of course, the alleged split between the circuits is irrelevant for an additional reason: there is no Brady violation in Strickler's case because *Strickler's defense team had actual knowledge of the information contained in the allegedly suppressed documents*. In a sworn affidavit, Thomas Roberts, one of Strickler's two trial attorneys, stated:

I have reviewed the [Stolfus materials] and although I cannot recall if I have seen these specific documents, I do remember the information contained in them. I remember discussing with Mr. Bobbitt the possibility that Ms. Stolfus may not be a credible witness because she had not come forward immediately and her story had become much more detailed over time. It seemed too good to be true.

(RA 1).

other conclusion would require a witness to give precisely the same account every time that he is questioned before or during trial, a requirement that is neither realistic nor reasonable.

The alleged "inconsistencies," furthermore, deal only with trivial matters which were not contested at trial. For example, Strickler never has contested that it was Leanne Whitlock who was abducted at the Valley Mall. Stolfus' supposed inability to initially identify Whitlock is therefore immaterial for Brady purposes. Likewise, there was never any disagreement at trial about whether Whitlock was driving her boyfriend's dark blue car with West Virginia tags. Nor was there any serious disagreement about the facts surrounding Whitlock's abduction. Strickler, in fact, expressly admitted in closing argument to the jury that he had abducted and robbed Whitlock. (RA 26, 36-37). Impeachment of Stolfus on these relatively unimportant matters under no circumstances would have created a reasonable likelihood that the result of Strickler's trial would have been different.

The Fourth Circuit also correctly concluded that the "Stolfus materials" were not material under Brady because Strickler validly was convicted of capital murder in the commission of a robbery and Stolfus offered no testimony even marginally relevant to that conviction.<sup>6</sup> Strickler, 1998 U.S. App. LEXIS 12805, \*30 ("Stolfus' testimony was not critical

<sup>6</sup> Strickler's argument – that the Stolfus documents were material because "Stolfus portrayed Strickler as the only one who committed violent acts against Whitlock" (Petition at 33) and, without impeachment of Stolfus, the jury was more likely to believe that Strickler was the person who pried the boulder out of the frozen ground and repeatedly struck Whitlock over the head with it while Henderson restrained her – must be rejected. Under Virginia's capital murder law, it was immaterial who dropped the boulder on Whitlock's head and who held her down. Both persons were equally culpable and both equally were subject to the death penalty. Strickler, 241 Va. at 495, 404 S.E.2d at 235; see also Coppola v. Commonwealth, 220 Va. 243, 256-257, 257 S.E.2d 797, 806 (1979), cert. denied, 444 U.S. 1103 (1980).

to the Commonwealth's case, especially in view of the overwhelming evidence in the record, independent of Stolfus' testimony, demonstrating that Strickler abducted and robbed Whitlock"). In this regard, independent eyewitness testimony conclusively established that after Whitlock's murder, Strickler had driven Whitlock's car, that Strickler possessed and unsuccessfully attempted to use Whitlock's bank card, and that Strickler gave a companion a pair of earrings Whitlock was wearing on the night of her murder. And, the Virginia Supreme Court concluded that the 69-pound rock used to crush Whitlock's skull constituted a deadly weapon as a matter of Virginia law. Strickler v. Murray, 249 Va. at 129, 452 S.E.2d at 653. That being the case, there is simply no reasonable probability that the result of Strickler's trial would have been different had Stolfus been "impeached" with the information Strickler belatedly developed and presented in his federal habeas action.

The Fourth Circuit's fact-specific application of the standard established by this Court in United States v. Bagley, 473 U.S. 667, 682 (1985) (allegedly withheld evidence is not "material" for purposes of the Brady rule unless there is a reasonable probability that disclosure would have changed the outcome of trial), and its determination that the evidence at issue in Strickler's case was not material clearly do not warrant a grant of certiorari. See U.S.S.Ct. Rule 10 (certiorari is rarely granted when the asserted error consists of...the misapplication of a properly stated rule of law."). See also Kyles, 514 U.S. at 460 (Scalia, J., dissenting) ("an intensively fact-specific case in which the Court below unquestionably applied the correct rule and did not unquestionably err [is] precisely the type of case in which we are *most* inclined to deny certiorari") (emphasis in original); Texas v. Mead, 465 U.S. 1041 (1994) (Stevens, J.) (court does not review cases which primarily present questions of fact).



**CONCLUSION**

The petition for writ of certiorari and motion for stay of execution should be denied.

Respectfully submitted,

RONALD J. ANGELONE, DIRECTOR

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Counsel

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Assistant Attorney General  
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**CERTIFICATE OF SERVICE**

On September 4, 1998, a copy of this Brief in Opposition was hand delivered to Barbara Hartung, Esquire, 1001 East Main Street, Suite 504, Richmond, Virginia 23219, counsel for the petitioner.

Pamela Rumpz  
Pamela A. Rumpz  
Assistant Attorney General

**RESPONDENT'S APPENDIX**

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AFFIDAVIT

Thomas E. Roberts, first being duly sworn, says:

In 1990, I assisted William E. Bobbitt, Jr., in the trial of Thomas David Strickler. I have reviewed the attached documents and although I cannot recall if I have seen these specific documents, I do remember the information contained in them. I remember discussing with Mr. Bobbitt the possibility that Ms. Stoltzfus may not be a creditable witness because she had not come forward immediately and her story had become much more detailed over time. It seemed too good to be true. The attached newspaper article is somewhat familiar. To the best of my recollection, we were concerned that Strickler had talked to a reporter without our knowledge or permission. It appears obvious that the witness quoted in the article is Ms. Stoltzfus.

I would be willing to testify to the above at the hearing scheduled for October 1 & 2, 1997 in the U.S. District Court at Richmond, Va. However, I am planning to be in Florida on a long-scheduled trip with my wife during that time.

Thomas E. Roberts  
Thomas E. Roberts

City of Staunton  
Commonwealth of Virginia

Subscribed and sworn to before me on September 23, 1997,

Bruno L. Morris . My commission expires  
Notary Public  
May 31, 1999





Anna E. Stoltzfus  
565 Hartman Dr

H. J. AL - 434-2775

172-36-8187

Amey Lee - 7-23-90

1-19-90  
1:00 PM

Joseph L. White  
6:10 - 7:30 PM

Amey Lee - 7-23-90

2nd 12-11-90 + 11-11-90

Paul - 11-11-90, 11-11-90

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RA2

CASE # 90-01-06-0067  
SUBMITTED BY DETECTIVE D.L. CLAYTOR

Summary of Interview: Anne E. Stoltzfus  
565 Hartman Drive  
Harrisonburg, Va. 22801  
Phone # 434-2775  
SSN/172-36-8187

On 1-19-90 and 1-22-90, Anne E. Stoltzfus was interviewed at the city police department after she advised that she recalled seeing some suspicious activity which might pertain to the LeAnn Whitlock case.

Ms. Stoltzfus advised that on Friday evening, 1-5-90, she was at the Valley Mall and observed a subject jump into a vehicle with a black girl, fight with the black girl, and then was joined by two other subjects. Ms. Stoltzfus stated that between 6:45 p.m. and 7:00 p.m. she and her daughter had completed their shopping and were leaving the mall, when she observed a black girl in a dark blue car coming into the mall parking area. Ms. Stoltzfus advised that she was sitting at the stop sign at the Penneys end of the mall (west end) when the black girl passed traveling east in front of the mall. Ms. Stoltzfus noted that she then turned right and fell in behind the black girl's vehicle and noticed that it had West Virginia tags. As they approached the front entrance of the mall, the vehicle stopped for what she thought was a bus or some type of vehicle. Ms. Stoltzfus advised that she observed a white male, long scraggly hair, run up to the passenger window of the black female's car and started pounding on the window and attempting

RA3

001200

to open the door. The subject appeared aggitated and wild. He pulled open the door and jumped in next to the black female and got right up next to her. The black female started hitting the guy. The guy then turned and motioned and a white female and a second white male ran from the entrance area to the car. The female was described as 18-21 years of age, 5'5", 140 lbs., (A little over weight), blonde/brown shoulder length hair, pale plain face, wearing blue jeans and denim jacket. The second white male was described as tall, 6', dark hair, cream colored jacket.

Ms. Stoltzfus advised that as the white girl attempted to crawl into the back seat the car lurched forward and the horn started blowing continuously. The girl jumped back and the second white male ran back to the entrance of the mall. The black female and the first white male started fighting again, until the horn stopped blowing. The white female and the second white male then got into the back seat of the vehicle.

Ms. Stoltzfus stated she pulled up beside the vehicle to see if the black girl was ok but could not get her attention. The black girl just stared forward. At the same time she noticed that the white female in the back was staring back at her and the white male in the back seat was attempting to hide down in the seat. Ms. Stoltzfus advised that she moved forward a little and looked back at the black girl, still trying to get her attention.

She noted that the black girl was glancing her way but still did not turn her head, and was mouthing something which in thinking back could have been "help". Ms. Stoltzfus advised that she drove up to Medco and pulled over to see if the black girl was ok. The car drove past her and everything seemed ok. However, when the vehicle got up to Leggetts Store it drove up over the curb and the horn again started blowing. The vehicle continued on and was last seen heading toward Rt. 33.

Ms. Stoltzfus advised that she was not sure whether she could identify the white males but felt sure she could identify the white female. She further advised that prior to the incident in front of the mall, she recalled seeing who she thinks were the same blondish haired male and white female inside the mall. The white female bumped into her because the white male, who again appeared agitated or high, was yelling at her to get someone (she could not recall who) to meet him at the bus stop. Ms. Stoltzfus advised that the incident occurred very quickly and that her daughter did not see anything.

Anne E. Stoltzfus was shown the following picture show-ups after first reading the Photographic Show-Up Admonition: # 6266, 4663, 5992, 4199, 5976, R.C.S.D. # 12527. Ms. Stoltzfus pointed out R.C.S.D. # 12527, Ronald Henderson as resembling the subject described as white male # 2. Ms. Stoltzfus advised that it looked like the subject but the beard was not right. She noted that if she saw him in person she might be able to

RA4

RA5

nc4205



identify him positively.

Photo Show-Up # 5031, 4787, 5900, 6186, 6337, 5906.

Ms. Stoltzfus pointed out picture # 6337, Thomas David Strickler, as resembling the subject described as white male # 1. Ms. Stoltzfus advised that the hair color was not right in the photo. She advised further that she might be able to identify him positively if seen in person.

-90 Approximately 6:25 p.m. Anne Stoltzfus was shown a photographic show-up including photos # 5346, 5351, 9107, Connie Lamb photo, R.C.S.D. 9771, and 5676. Ms. Stoltzfus first read the photo show-up admonition and after viewing the photos advised that she could not identify any of the photos as the female who she observed enter Ms. Whitlock's car. She advised that if she saw the subject in person she would know for sure.

-90 Approximately 7:10 p.m. Ms. Stoltzfus was taken to the county impound lot where she viewed the Mercury Lynx, W. Va. license NKA-243. Ms. Stoltzfus advised that the vehicle looked like the one at the Valley Mall. She stated that it was the right color, size, and it had the same little blue stripe down the side, and had the same colored interior as the one she saw.

-90 Anne Stoltzfus advised that she had seen photographs of LeAnn Whitlock and, without a doubt, she was the black female that was operating the blue vehicle with West Virginia tags who she observed at the Valley Mall on 1-5-90. Ms. Stoltzfus further advised that the vehicle she viewed on 1-24-90 was the vehicle she saw at the mall. She had made up a quote to help remember the license number after the incident, "No Kids After 2-43".

RA6 061206

RA7  
061207

Approximately 9:30 a.m. Anne Stoltzfus, accompanied Detective Claytor to the Rockingham District Court to attempt to identify the female she saw on the evening of 1-5-90 with Tommy Strickler and Ronald Henderson. Ms. Stoltzfus observed a female known as Mary Jane Oplander and stated that Oplander looked like the girl she saw on 1-5-90.

## Observations

1-A-90  
1-200m

Mail  
 List  
 girl  
 Mary

Quitting

1.) Black girl parked in front of Valley Mall Entrance in dark blue "new" sports car West VA. tag Seroungy "burn-type", "W. Va. hick" with long scraggly blonde hair runs to passenger window pounds impatiently, then opens door & jumps. (A girl, que leaning against outside wall, fear people inside Mall Entrance)

2.) Black girl starts hitting the guy in her car. He backs out and waves to the girl.

23. f. Deer opens  
guy mentions  
for others to  
come

3.) The girl & guy<sup>2</sup> run towards car. Girl puts one leg in car, car lurches forward driver honks horn continuing. The girl (ave. ht., ~140lb, bl. lt. brown hair, plain face, no jewelry) jumps back & the guy<sup>2</sup> runs back toward wall.

4.) Guey #1 + Black girl start fighting again. She stops blowing horn at girl + guey #2 (tall, dark hair, H. cream) get into back seats + lean forward in a huddle with guey #1. RAG

RA9

Action: 5.) I drive around car & parallel to car. I log

RA8  
~~001268~~



over to see if black girl is O.K. She just stares straight ahead. Girl in back seat stares at me. I feel uneasy but uncertain of my uneasiness.

- 6.) I drive on to Medco Drug & park to see if the black girl is O.K. <sup>Longest</sup>
- 7.) She drives the car past me, around corner, & at curb marked & above drives up over curb & honks horn. I follow them. They look normal. They turn left to go out to 33 & I turn right to go out other direction.

565 Hartman Drive

Harrisonburg, Virginia 22801

January 22, 1990

Dear Sergeant Claytor:

I want to clarify some of my confusion for you. First of all, I tend to remember things in pictures rather than in over-all logical constructs. When I didn't remember any Mall purchases, I didn't remember being there. But my 14-year-old daughter Katie remembers different things and her sharing with me what she remembers helped jog my memory. I have an extraordinary visual memory but I hadn't placed all my mental pictures together with that same night.

Katie remembered my only purchase at the Mall of 4 name cards at \$0.75 each at Centerpoint. We both remembered our trek after Centerpoint, but I thought it was a different night. So I knew that if I could confirm that one purchase, all the associated mental pictures following would have occurred January 5. I did this morning confirm by Centerpoint bookstores' cash register tape a purchase of that amount at 4:40p.m. (showed 4:30-10 minutes slow). This means that I can construct with good confidence our exact journey and get more accurate time estimates.

I picked up Katie shortly after 4:15 pm at the Medical Arts complex and headed to the Mall. We went first to Centerpoint bookstore to purchase a specific CD. They didn't have it and I purchased the name cards at 4:40pm and we left for K-Mart. I purchased a prescription and some other merchandise at 5:31pm (confirmed by cash register tape and also back of check #1190). We left K-Mart and drove back over to the Penney's catalogue sales/ Watson's lot. From there we went to:

Approx. Time	Place	Specific Memories
5:40pm	Centerpoint	Check to see whether we could order CD They didn't know how; suggested we try Record Corner or Musicland

5:45pm	Record Corner	No luck
--------	---------------	---------

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RA11  
0011211



4  
5:50pm Musicland Wasted 15-20 min. trying to get help to find the CD.  
6:05-6:10pm Told to come back in about half an hour to find someone more knowledgeable.

6:10pm Watson's Looked around for half an hour.

6:40-6:45pm Musicland Got there, still had to wait 5-10 min. Another guy finally came and helped but was no help.

\*\* On the way back to Musicland the 2nd time I remember a girl who looked just like the girl who got into that car bumped smack into me. She was walking toward me facing the other (Leggetts) direction. A revved-up mountain man was yelling at her that he would meet her out at the bus stop. He went around the display and up the B. Dalton bookstore side and could have been the same guy who knocked on the car window because he had the same weird walk-like-an-animal gait. I remember looking at my watch and a gentleman who saw me asked me what time it was. I have a vague memory that my watch said 6:50 but is 5 min fast so I answered 6:45pm.

6:50-7:00pm Centerpoint Asked briefly when someone would be in so that I could place the CD order and was told tomorrow (Saturday) manager Abe Clymer.

Approx. 6:55-7:05pm Returned to car. Had discussion about ear piercing and I decided to take Katie to Leggetts to show her earrings for unpierced ears. We drove around the front of J.C. Penneys, stopped at the stop sign, and the black girl in dark blue car drove past. (I saw a car that looked somewhat like hers parked next to the railroad tracks across from Valley Heritage (a company car?) only it was lighter blue.) Then I turned right and pulled up behind the black girl, noticed the West VA tags, and observed the other things I told you.

Observations that corroborate the time that I saw those 3 characters get in the black girl's car to about 6:55 to 7:10pm are Katie's and my combined memories on when we got back home. Katie remembers being mad because everyone had already eaten supper and I heated up some spaghetti sauce for her but refused to cook some noodles because it was so late. I remember the argument. My memory is that I said it was only 20 after 7, which may have been 7:15 because our dining room clock is 5 min. fast. I also remember arguing that it would be close to 8:00 by the time I spent half an hour cooking noodles. She remembers being upset that she couldn't watch

TV because her dad was still watching his news program (McNeil/Lehrer Hour: 7-8pm). This means we got home after 7pm, because the children watching TV during the 6:30-7:00 national news is never allowed. It also means we got home before 8pm. I drove home the "back way", which may have taken 10 to 15 min.

I have a very vague memory that I'm not sure of. It seems as if the wild guy that I saw had come running through the door and up to a bus as the bus was pulling off. I have impressions of intense anger, of his going back to where the dark haired guy and girl were standing. Then the guy I saw came running up to the black girl's window. Were those 2 memories the same person? The black girl couldn't drive when the bus pulled out because about 2-3 people coming from the parking lot walked in front of the car.

I'm sorry my initial times were so far off. First I remembered it being dark and remembered driving on past Leggetts and not going in. I placed the time around 9:00pm thinking I must have not gone in because the Mall was closing. Later I thought I hadn't gone into the Mall because I made no purchases. Katie remembered the small Centerpoint purchase and I knew that if that happened January 5 I could trace our path from there. That was corroborated by Centerpoint this morning, so I feel very certain about the above approx. times.

Sincerely,

*Anne Stoltzfus*  
Anne Stoltzfus  
172-36-8187

P.S. - Katie doesn't remember seeing the 3 people get into the black girl's car, but she does definitely remember my pulling over at Medco Drug and explaining that I wanted to make sure those people were OK. She remembers that as she was looking backward and asking "who?" I said "These 4 legs go up over the curb (toward the corner of Leggetts)."  
Katie also had a specific memory of my buying the 4-750 name cards during the first visit to Centerpoint, which was corroborated by the Centerpoint register tape.

RA12  
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RA13  
001213



Notes for Detective Claytor:

My Impressions of "The Car"

(Anne Stoltzfus)

I remember the car as dark blue (navy) and shiny. The make was definitely not foreign but American. It was not a Subaru, Toyota, Mercedes, Renault, Peugeot, VW, or Honda. It was not a Buick or Cadillac. It was not a large, full-size car and not a mini car. I think it was smaller than a Buick Skylark and about the size of a Buick Skyhawk.

I can best describe the car in comparison to my VW Rabbit. The car was wider than my Rabbit, maybe two feet wider. It was higher than my Rabbit, maybe 3-6 inches higher. It was longer than my Rabbit, at least in front - by maybe a foot.

It was a standard boxy American style. [I remember looking for the make and not being able to see it in the dark. I have a vague impression of silver letters on the left rear that said "Hollar" beside or inside an oval emblem, but I'm not at all sure.] The lines of the car were straight and parallel to the road, i.e., the rear was not jacked up like many cars are. I think it was a two-door.

1-25-90  
1:45am.

Detective Claytor:

Tonight I identified beyond a shadow of a doubt that the black girl I saw 1/5/90 was Letitia Whitlock. I spent several hours with John Deen looking at current photos from which I made the identification.

(Also his description of the girl in jail seems to pretty closely match mine.)

Thanks.

- Anne Stoltzfus

RA14  
061214

RA15  
00121



January 26, 1990

Dear Detective Clayton:

As soon as I saw John Dean's pictures of LeAnn Whitlock, I knew beyond a shadow of a doubt that she was "the black girl" and then I remembered the license number. To realize that I actually witnessed LeAnn's abduction is terribly upsetting, because I came so close to notifying the police and to doing a couple other things that could have made this totally different. Even when I saw the car, I thought it could have an exact duplicate with a different owner. (As long as I could block out the license number, I could believe that.)

I should be able to identify all three of the persons I saw get into that car if I saw them in person, because I not only saw them get into the car but two other times inside the Mall. I am sure they are the same people. The first time I saw them was about 6:00pm inside Musicland. I had been waiting for a very tall, black guy ("Ron"?) to wait on me and as soon as he was free these three people came in. Mountain Man was impatient and I instinctively backed up and almost into the dark-haired quiet guy. My entire left arm brushed a long tan light-weight coat of a synthetic fabric that was draped over his right arm. I told "Ron" to wait on them first. When "Ron" was done with them he disappeared and a girl told me to come back in half an hour. The reason I had to wait when I came back to Musicland was because "Ron" never returned. A short, brown-haired guy ("Bruce") waited on me. They might remember and be able to identify these characters for you.

As I was returning to Musicland I had the hefty blonde girl crash into me and almost get her button snagged on my open-weave sweater, as I had told you. I'm sure this is the same girl who got into that car. Her face was round, her hair dark-blond, scraggly, straight-cut almost shoulder length. I think she had a few freckles and I think grey-blue eyes. She had a certain "not-too-bright" look. She looked like an anemic, dopey version of woman #3 (upper-right-hand corner) in that group of pictures you showed me. As she bumped into me Mountain Man was yelling at her "I have to get out of here. Where's Ronnie?" She turned and I turned and saw the dark-haired guy standing near the end of the display toward J.C. Penneys in a long tan trench-type coat. Mountain Man said, "You and Ronnie meet me at the bus stop." She said, "Where's the bus stop?" I said, "Up at the Mall entrance." I remember Mountain Man was multi-layered. The bottom layer was a grey T-shirt that I think had blue writing "Harley Davidson" on it. My impressions flow together but I'll describe them anyway. The outer layer had a colorful bird decorated

on the back and I think red letters that said Fawley or Raleigh. In between layers were flowing, open in the front, and maybe longer than the outer layer. I think one layer was a faded denim-blue color shirt and another a greenish-greyish flannel shirt.

Another point of clarification. I think it was a white(?) pick-up truck that stopped ahead of us to turn left. I remember thinking, "They went in and parked and are now walking in front of the blue car while we're still sitting here waiting to go." Those people might remember the abduction. Also, when LeAnn laid on the horn there were 6 or 8 people inside the Mall entrance who looked out to see what was going on. There were a couple people in the parking lot who stopped and looked. They might be able to identify these characters.

Back to "the girl"... I told you she was the same height as me (5'6"). But I forgot that I am shorter because of a spinal injury and vertebral collapse (spondylolisthesis). I measured myself this morning as 5'4". She would wear about a size 14 or 16 blouse and about size 16 jeans. [I have a crazy association of another girl who reminds me of this girl and probably is not. But I'll tell you anyway. December 1987 I was working at Leggetts at Valley Mall as a sales clerk. A girl who looked similar to this girl came in and tried to get a cash refund from me for merchandise she had just gotten in exchange for a \$90 dress that had been stolen. I alerted security and detained her long enough for a hot-headed hick waiting for her in the car to come in and raise a ruckus.]

Thank you for your patience with my sometimes muddled memories. I know if I believed at the time that I was witnessing a crime I would have much, much more vivid memories. I really didn't believe that's what I saw until I saw LeAnn's pictures. In fact, I'm sure that if Kim Davis hadn't called the police and that other detective hadn't come to JMU and asked me to come in and talk to you, I never would have made any of the associations that you helped me make. Now that I know what it was that I saw, I have been very upset and I really don't want to look at any pictures or people for a while. I need to be trying to study. I am really glad you left me in the dark all this past week, because otherwise I think I would have been too upset to remember anything. I want to cooperate in your investigation and would be willing to help later on. It's just that right now I need a break. Thanks.

Sincerely,

Anne Stoltzfus  
Anne Stoltzfus

RA 116  
204217

RA 17  
204217



My first encounter with Mountain Man was about 6:00 p.m. January 5, 1990. I was in Musicland at Valley Mall waiting to be waited on when he stormed in with Blonde Girl. I instinctively backed up and into Shy Guy. I remember touching the long tan coat he had draped over his arm and thinking that I felt something hard. I apologized and Shy Guy smiled slightly. As he quickly put on his coat and put his hands into his pockets, his soft brown eyes dispelled my fears. The tall black Musicland clerk (Ron or Rob) came over to wait on me and I told Mountain Man to go ahead, since he was so impatient.

About 45 minutes later I saw Mountain Man again when he was coming toward me as I approached Musicland coming from the Centerpoint Bookstore direction at Valley Mall. Shy Guy had just walked past me and Blonde Girl was walking toward me several yards ahead of Mountain Man. Mountain Man was yelling, "Donna, Donna" very loudly. I asked Blonde Girl if she was Donna and she said, "Donna or Sharon". I said, "He wants you." (I stopped in my tracks and watched Mountain Man because he was so revved up that I thought he was either manic or on drugs.) She turned around and Mountain Man said, "Where's Ronnie?" She said, "Up there", pointing toward Penneys. As Blonde Girl started walking, Mountain Man yelled, "I gotta get outa here. You and Ronnie meet me at the bus stop." She looked back and said, "Where's the bus stop?" and crashed into me. We both apologized and I then gave her directions to the bus stop. Then I promptly tried to follow Mountain Man up the other side of the display because I was concerned about his behavior, but I lost him and proceeded back to Musicland.

I spent about 5 minutes in Musicland, 10 minutes in Centerpoint Bookstore, and then went to my car in the Watson's/Penneys' lot. This was approximately 7:00 p.m. I was with my 14 year old daughter.

I drove in front of the west end of Penneys and stopped at the stop sign. A black girl in a nice shiny dark blue car drove in. She was singing. (I remember thinking, "Rich black college kid.") I turned the corner and stopped behind her at the Mall entrance. I noticed her West Va. tags and thought, "Rich black college kid from West Va." She had stopped because there were vehicles ahead of us. My memory is some sort of mini-bus was parked and waiting to leave. Mountain Man had come tearing out of the Mall, ran up to the bus and yelled at the driver, and then hit the back of the mini-van/bus as it drove off. I remember telling my daughter to look at "that madman". Ahead of the black girl was a pick-up truck, which was waiting to turn left. About this time Mountain Man ran up to her car (passenger side) and started yanking on the door handle and yelling. He couldn't get the door open and started pounding on the window. She reached over to the door I believe to make sure it was locked, because Mountain Man tried again and

was furious and didn't get it open until he shook and shook the door with both hands. He jumped into the car, smack up against her, and she crouched toward her door and started hitting him with her right arm. (I thought it was a domestic squabble. Mountain Man didn't look like he fit with her, but he did look like he came from West Va.) The Mountain Man leaned back over, opened the passenger door, and motioned to Blonde Girl and Shy Guy to come. They had been leaning up against the outside wall. Blonde Girl put one foot into the car and the car lurched forward and nearly hit the family from the pickup truck that had parked. The black girl laid on the horn for quite a while and Mountain Man kept hitting and hitting her until she stopped. (This caught the attention of 8-12 people inside and outside the Mall, but they all seemed curious at first and then unconcerned.) Then Blonde Girl got into the back seat and Shy Guy followed. He handed his tan coat to Mountain Man, who laid it down on the floor and fooled with it for a while. Blonde Girl and Shy Guy sat front on their seats touching the black girl while Mountain Man was bent over (all buddies, I thought). As soon as Mountain Man sat up and came over against the black girl, the other two sat back and relaxed.

But the black girl wouldn't go. I tapped the horn and there was no response. (Now I was starting to get worried.) I pulled up beside them, exactly parallel, honked the horn to get her attention, but she sat there expressionless, like a mannequin. I jumped out of the car and started to walk between the two cars to talk to her, but there wasn't enough room. Shy Guy looked scared and laid down on the back seat as if to hide. Blonde Girl kept staring at me. I got back into my car and pulled front so that the black girl had a complete view of me. I asked her three times, "Are you O.K.?" Each time she would meet my eyes and then purposefully look down to her right side. I was frustrated because she was expressionless and said nothing and seemed to intentionally look away. (I wonder now if there was a knife or gun at her side.) Finally, I pulled forward a bit more, honked the horn, and said again, "Are you O.K.?" This time she mouthed, "Help". I started to drive away and only when I reached Medco Drug did I realize that she was saying, "Help". I pulled over and told my daughter to run in to get security but about that time the black girl started driving past us. I had my daughter write down the license number on a 3x4 card - West Va./ NKA-243.

As the car went around the corner at Leggetts it went up over the curb. The car really tilted, the horn honked, people were hitting each other, and I thought the whole bunch of them must be drunk. My daughter and I followed them out to the stop sign. They sat for a while at the stop sign and they all seemed calm again. I told my daughter to help me remember, "No Kids Alone to (2) 43. 2+43 makes 45, my age." Then they turned left and got into the lane to head back into town. I was going to follow them, but they switched lanes to head out 33 East. I noticed I was almost out of gas and I am not familiar with that part of Rockingham County, so I drove back toward



the telephones at the theater entrance to call the police. (When I got there I realized all I could say was some kids that looked like they were drinking and fighting and carrying on were driving out Rt. 33.) I rationalized away my bad vibes and decided to drive on home and get my family their supper.

So where is the 3x4 card? It would have been very nice if I could have remembered all this at the time and had simply gone to the police with the information. But I totally wrote this off as a trivial episode of college kids carrying on and proceeded with my own full-time college load at JMU. I was too busy to read the paper or listen to the TV news. I did learn at JMU that LeAnn Whitlock had disappeared from Valley Mall January 5, but I hadn't seen a black girl inside the Mall that night and didn't make the association. The following week it was a frequent topic of conversation in my classes. Monday, January 15th, I was cleaning out my car and found the 3x4 card. I tore it into little pieces and put it in the bottom of a trash bag. I remember the thought running through my mind, "The police won't find it there." My heart started racing and I said outloud, "What?! Am I paranoid?" But I still made no association.

Wednesday I saw a newspaper picture of John Dean's car, but I didn't consciously recognize it. The newspaper bothered me, so I put it on a pile of papers by the woodstove. The picture still haunted me and distracted me from studying. I finally tore it up and burned it in the woodstove.

Later Wednesday in one of my classes I was talking with Kim Davis and some other black students about LeAnn. I told her that I was at the Mall that night, but that I didn't see any black girl inside the Mall. Then I told her about the crazy car in front of me. She reported that to the police. Thursday afternoon a detective came to my class and Friday I had to go to the police station to talk to Detective Claytor.

All weekend whenever I tried to get to sleep I was haunted by this nonsense chant, "No Kids Alone to 43." I still made no conscious association. I did know that it was unusual for me not to remember license numbers. Even later when I saw John Dean's car and recognized many of the details, the interior grey, etc., I could not recognize the license number. I did know that every time Detective Claytor asked me about the number I felt like I was going to cry. Later that night when I saw pictures of LeAnn and knew she was the black girl in that car, I immediately knew the license number.

- Anne Stoltzfus

TV  
cable TV  
listed or  
the public?  
SINCE



many faces of  
**LOVE**  
EXTRA



Danceville eastern  
delight Appalachian  
Trail hikers  
SPORTS

# Roanoke Times & World-News

METRO EDITION

Sunday, June 17, 1990

Roanoke, Virginia \$1.00

## C b l i c a t s

offers  
omise



Torrent's destruction

A farm building near Strasburg, Ohio, has washed off its foundation by the Friday morning flash flood that left at least 34 people missing. Searchers on

Saturday found four more bodies, including that of a 6-year-old girl, bringing the number of those known dead to 15. Search on AB.

## Slain student's abduction described

'I figured it must be a domestic dispute'

By MONICA DANNEY

LeAnn Whitlock was walking and singing out loud in her car on the night she was killed, a witness on the Wednesday night.

The look on Whitlock's face changed in one of those moments when the witness says she saw a flash of light and the car was gone.

Whitlock, a 20-year-old University of Virginia student, was walking from her car to a nearby store about 30 yards away when she was killed, the witness said.

Whitlock's body was found in the road, the witness said, about 100 yards from the store.

1 Witness seen suspects force their way into Whitlock's car at Valley Mall on Jan. 5.



Witness seen suspects force their way into Whitlock's car at Valley Mall on Jan. 5.

2 Witness follows Whitlock's car from mall to Route 33 toward Strasburg, eventually, witness gives no chase.

3 Another witness sees a suspect, Tommy David Stricker, driving Whitlock's car, turn onto dirt road just north of Waynesboro.

4 At 9 p.m. on Jan. 5, suspects are spotted dancing at Dean's Inn, a Strasburg nightclub.

5 Whitlock's body is found Jan. 14 in a wooded area five miles north of Waynesboro.

Stricker ("Whitlock's killer"), Stricker and Taylor both police say, the witness said.

The witness said Stricker was driving "Dean's Inn" at the time, and was looking for a car to steal.

The witness and her daughter were in their car when they saw the car and saw Whitlock drive past. She said Whitlock was singing loudly and smiling.

The witness pulled out behind Whitlock, who was following a pickup truck. Her car was stuck in traffic, and she saw Whitlock's car disappear into the woods.

A car pulled up to Whitlock's car and the witness saw two people get out of the car and walk toward the car.

She said she saw Whitlock's car and the witness saw the car disappear into the woods.

The witness said Whitlock was singing and smiling when she was killed.

"I figured it must be a domestic dispute," the witness said.

When the police found Whitlock's body, the witness said, she was shocked.

PLEASE BE ABSENTE

## achev revising Soering clues hard to pin down

By MONICA DANNEY

it art of the deal



Witness seen suspects force their way into Whitlock's car at Valley Mall on Jan. 5.

Witness follows Whitlock's car from mall to Route 33 toward Strasburg, eventually, witness gives no chase.

RA 20  
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RA  
21



## FROM PAGE A1

[illegible][illegible]

**Starliner and Tader,** manufacturers, send mine Dave's car to Virginia Beach.

In an interview from jail, Starliner encouraged us and Tader went to the bench at Dave's aid. He showed my overreaction to Whitlock's kidnapping or murder, however.

Starliner, obviously concerned we wouldn't survive long to save him for our missing Henderson,

"All the circumstances are leading me to think the girl's dead," he said. "They've got me and due to the fact that I was alone in the car, they must have done it. I was in the car—I can't deny that—but I wasn't in the car with the girl."

His version of the story is the

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...was intimidating were using U.S. 11 against Massachusetts and New Mexico when Massachusetts pointed him up to Don's car on Jan. 1. They know each other legal person, but were not good friends, he said.

That night the two of them sat Ticker at Don's Inn in Salem. Scribner said he had not known her before.


Scribner and Ticker drove to Virginia Beach the next day, after Massachusetts in their borrow the car. The Massachusetts told them that he had to secure the car to West Virginia the following Friday. Scribner said he was not sure.

Three days later, Scribner said, he found Massachusetts hanging in Whitlock in the car's glove compartment.

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**MONDAY**

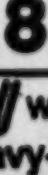
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...ments. He said this made him "upset."

Several months after Whitcomb was killed, her parents, Ed and Doris Whitcomb, received a handwritten bill in Leno's name. The charge came from Virginia Beach.

A month-grade dropout who has worked odd jobs since leaving school, Whitcomb can best be described by police as a drifter, a lout he says he isn't.

"I don't know why they call me that. I guess because I don't stay in one place," he said. "But a drifter to me is somebody who has nothing. I always have someone, except that I never stay in one place."

"The great one of my way is to let them know to keep people," he said.

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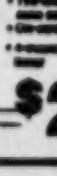
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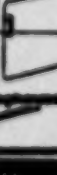


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**Y**

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please the Court. Ladies and gentlemen of the jury, we began the other day in the trial by asking all of you the questions that have to be asked in this type of a case, in the whole series of it and each one of you was asked if you would decide the case solely on the evidence that was heard, presented from the witness stand and each of you agreed that you would do that. In a few minutes it is going to be your function to decide the case based on the evidence you heard and the key question in this case as Mr. Ervin has indicated, is that you will have to decide what the evidence proves about Mr. Strickler's participation in the murder that took place in this case. Now you have received the instruction on capital murder and I want to go over that. I know Mr. Ervin read part of it. The capital murder instruction lists the elements that are part of that offense, that have to be proved to establish that offense. And the first element, the first thing that is listed is that the

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defendant killed Leanne Whitlock. That's the first and primary element of the capital murder charge, the instruction. There is another instruction which defines that element a little bit. It says that the Court instructs the jury that the evidence must establish beyond a reasonable doubt that the defendant actually caused the death of Leanne Whitlock, before you can find him guilty of capital murder. One who is present aiding and abetting the actual killing but who is not the immediate perpetrator is a principle in the second degree and may not be found guilty of capital murder. And Mr. Ervin has also gone over that entire instruction with you and you will have these back with you so that you can go over them yourself. I want to review with you now, some of the evidence, particularly in regard as how it, what it shows about Mr. Strickler's participation in the murder. The evidence shows that two men and a girl were at the mall. Ms. Stolfus said she saw these people there and she met him and that she saw them abduct Leanne Whitlock. They come and beat on the car, got in the car and drove off in it. A little bit later there was a man that said that he saw the car coming down 340 and there appeared to be four

people in the car as it turned in this lane that he was familiar with. He saw just three people at that time and it is not explained as to why there were four people and then three people but perhaps the person in the back had pulled down somebody. He said the person in the back had their arms sort of up in a funny manner. But he says that he identifies Mr. Strickler as being the driver of the car and that there was a girl, a white girl, who was in the passenger seat next to him. The evidence clearly establishes that the murder took place in that field where the car turned down. That that is where Leanne Whitlock was killed. There are holes in the ground there. There is blood in the holes in the ground, there was hair and there is a rock and there is blood on the rock and the body was found there and there is the medical testimony, the evidence that the blows, that type of wound, the fractured skull. That there was instantaneous death and that, it's clear that that is where Leanne Whitlock was killed. The next real direct evidence we have is Henderson and Strickler were seen about nine that night at Dice's Inn. Several of the girls testified, said that they saw them there that night. They saw them leave with Donna Tudor that night. Donna



Tudor went with them. The next witness in the sequence of events for that night is that the witness, Mr. Workman, said that Henderson came to his house about four or five o'clock that night. Came in, appeared agitated, was rubbing the blood on his blue jeans and he said I've killed somebody. I didn't want to do it but I had to kill someone. The evidence is that shortly after that Mr. Strickler and Donna Tudor leave, leave Henderson there, go, they end up going to Virginia Beach. They are at Virginia Beach for about a week and they get back, shortly after they get back here, the car breaks down and the car is left at the church and Mr. Strickler and Donna Tudor are arrested. When they are arrested there are items in their possession, of course they are connected to the automobile, the automobile that Leanne, Strickler had. There are credit cards, earrings, Donna Tudor had the earrings. There are personal belongings that were in Leanne Whitlock's possession, that are in their possession after they are arrested here in Augusta County. Now all of that shows pretty clearly and without much dispute as Mr. Ervin indicated, that there was a robbery and that there was an abduction and that a murder took place. But it doesn't prove who

killed Leanne Whitlock. And there is additional evidence that I want to get in to now that tends to go to that point. A part of that is that later on things were found at this sight where the body was ultimately discovered. The first thing that was found was Henderson's wallet with his identification in it. The next thing that was found was a shirt and bra that was sent to the lab. There was, there was the lab analysis and the experts who testified said that they were hairs that came off of the shirt and bra. They never testified as to whether the hair came from the shirt or the bra. It was all submitted as one package and there is no evidence as to what, where the hairs came from. Just that hairs were removed from the shirt and bra that were sent were identified, were consistent or similar to the hairs, to Mr. Strickler's hair. The man said that that is not a positive personal identification but they are consistent with Mr. Strickler's hair. There is also no evidence as to whose shirt and bra that was. There was never any evidence that was Leanne Whitlock's shirt or her bra. The only evidence is that this piece, items were found there at the scene just like Henderson's wallet was found there at the scene. And that these

hairs came from somewhere on them. We don't know whether it is the shirt or the bra but they came from somewhere on them. And I would submit to you that the evidence as I said clearly shows that an abduction took place and that there was a struggle during the course of the abduction and it's, if this was Leanne Whitlock's shirt, it's conceivable that the hairs that were on there got there during the course of the abduction. We just don't know that, we don't. And that point we have to speculate about as to when they got there and what the significance of it is. We can speculate about all of the evidence that comes from the scene itself. Were there two people there, were there three people there? The security guard at, that testified first from Valley Mall said that she saw Henderson and Strickler walking around and that there was, she never saw any woman, never saw a female with them. But Ms. Stolzhus was definite, was positive that there was a woman and she described her. Said she was referred to as Donna. Said that they said this is Donna or Sharon. We can speculate about what the people that were there were doing. If there were three, what were two doing and what, who was doing what? Was one person turning the car around while the others

were doing something with Ms. Whitlock or, but we just don't know from the physical evidence and from the, from what was submitted, we don't know what was taking place. We have to guess and we have to speculate about what happened. You've been given the instructions and it says suspicion or probability is given, probability of guilt is not enough for a conviction. In other words, it is not enough to say that Mr., Mr. Strickler was probably doing this or he probably had a part in it or it was very suspicious. It has to be proved beyond a reasonable doubt that he actually was the person who killed Leanne Whitlock before you can find him guilty of capital murder. And there is evidence that points to, to Henderson. He was identified at the mall, he jumped in the car, he apparently was in the back seat. The man that was there was in the back seat. The woman was in the front seat. There is a white woman. So there is evidence that, that Henderson was sitting in the back seat and there is an inference that that's where Leanne Whitlock was at that time when they turned in the lane. Henderson's billfold was found in the field so he was definitely there. Henderson had blood on his pants. Now there are several people that have testified that there has



been blood on his pants. Workman said that he was rubbing the blood spot on his pants when he was there in his apartment. The lab report says that the pants that Henderson took off at, at Ms. Silvious's house had blood on them. That's an indication that he was there. And on top of all of that he made the statement, that I have already referred to, that he had, that very night that he had killed someone. So there is evidence that certainly points to him. There is also evidence that points to, to Mr. Strickler. There is the testimony of Donna Tudor but I would submit to you that her testimony is just not credible. First of all, she has made a deal with the police. She has been charged in this. She came back, she was arrested, she was in the car, she had, she had the earrings on and so she says I will make the deal, I will tell you what you want to know if you will just let me off, get me out of this charge and she said that was what the agreement was. In fact, even so, the Commonwealth wasn't, didn't trust her enough to, to believe that she would be in Court so they had her put in jail a couple days before the trial so that she would be here for her to testify. That's how reliable she is. On top of that was the testimony of her estranged husband,

Jay Tudor, and I really, I don't know what you need to make of that or not make of it but anyway he says that she, she made the statement to him that she actually was there at the place. Maybe she made a statement or maybe she didn't make a statement to him. She said that she was there at the house but she denied making the statement. But there is some evidence indicating that she could have been there. There was several witnesses that say there, there was this woman, this woman seems to fit Donna Tudor's description. The name of Donna was used. It's certainly possible that she was there and if that is the case, she at this point isn't going to acknowledge it. And if she is there, she is certainly able to tell the police what they want to know. She also, what she says isn't clear. She is very vague about what she says. She says, she said they said something about "it". She wasn't really, we don't know whether that refers to the incident with Leanne Whitlock or does that refer to something else because it is ambiguous. What does "it" mean when she is referring to it. She keeps using the word in her testimony. She always says they said this. She never says who did what, she just says they were whispering and I couldn't really hear

them and they said something but I really couldn't hear it. So her testimony is very vague. Mr. Ervin tried to get her to say certain things that indicated that, that she had heard Strickler say something but she really never said. She said all I heard was this whispering that they were saying that something had happened and I overheard something about a rock crusher and they said these things and she never really explained what that meant. Now she did, she said, she also said that there was blood on Mr. Strickler's pants. But she is the only witness who said anything about that. There was, the witnesses that the Commonwealth called from Dice's Inn. They were all asked how Strickler was dressed that night. And one of them said he was dressed very nice. His pants were a little dirty but nothing out of the ordinary. She didn't say anything about any blood on the pants and she had indicated she observed them. The, Mr. Strickler's mother who of course is a biased witness, she is his mother, testified that she washed the laundry and that there wasn't any blood on the pants, on Mr. Strickler's pants when she washed them. But in addition to that, the lab technician said that there is a test that can be done to determine if blood is present even after

the clothes have been washed and we ran that test and that didn't show that there was any blood present. So there, so there's no evidence except for Donna Tudor's statement that she, and she is saying that this was a week afterwards when the clothes were washed. There was blood on there. But nobody who saw Mr. Strickler that night or the next morning said anything about that. In fact the ones that were asked directly said they didn't see any blood. There is, there is the black shirt that has been put into evidence and that was shown to all the witnesses. Some of them said they identified it, some of them said they didn't. One of the girls at Dice's, well she, Mr. Ervin said is this the shirt that Strickler had on and she said no that's not the shirt. Ms. Stolzhus said I can't say that's the shirt he had on. So there is some connection, I mean there is some confusion as to whether that is the shirt Mr. Strickler actually had on that night. The only thing that we know about it is that that is the shirt that came back from Virginia Beach because that is the shirt that was there in the car. Donna Tudor said it came back from Virginia Beach because she said she put it there in the car. There were stains on that, some body fluids, semen and blood. If



Strickler and Donna Tudor had been together for the whole week and the shirt gets back there, we don't know where those stains came from or how they got there and there is no, there is no evidence to say that those things are identifiable with, with Leanne Whitlock or that they in anyway originated from the night that the murder took place. So there is really no connection between that black shirt and the murder itself. It is just a piece of evidence that came in a week or so later. I've already referred to the, to the hairs on the shirt and bra and that's a piece of evidence that connects Mr. Strickler to the scene. It was found there at the scene, it had his hair on it. But what does it mean? The meaning of it is not clear because there was this abduction. There is no evidence as to where the shirt and bra came from or where the hairs came from off of there. Conceivably it could be the (inaudible) of the other woman that was, that was present. We just don't know that. So the significance of that is not clear. And it certainly doesn't prove that Tommy Strickler was involved in the murder other than he was there. And I'm saying involved, I mean he was the actual, the perpetrator of the murder. What there isn't is, there isn't evidence

to show that he, that Tommy Strickler was right there around the murder scene. There were fingerprint and footprints introduced in the evidence to show that Tommy Strickler was in the car but there wasn't any evidence of that sort, no footprints, no fingerprints to show that he was right around where the rock was and that he was right around where these holes in the ground were or that he was around where the body was. There is nothing of that sort to show that he was right there where the murder took place. There is, there are no, there is nothing, no hair or anything of Leanne Whitlock that was on his clothes that would show that, that he was in close contact with her. There are no eyewitnesses. And of course, there wouldn't be. But in sometimes they are. I mean in some cases of a murder there are witnesses and certainly that, that helps prove things. For instance, in this case, in the abduction, there is an eyewitness, there are eyewitnesses, so compare the way you feel about the certainty you feel that Tommy Strickler got in the car and took the car, to the uncertainty you feel about what happened at the sight of the murder and that is the sort of judgment you need to make. You need to be certain. You need to

believe beyond a reasonable doubt that he was the actual perpetrator. The person who committed the actual murder, before you can find him guilty of capital murder. Now I want to go over with you briefly the first degree murder instruction. That instruction lists the elements also and the elements of that offense are that Leanne Whitlock was killed. That the killing was malicious. That the killing occurred in the commission of a robbery, rape or abduction. That the defendant was a participant in the commission of this robbery, rape or abduction. That the defendant or another participant in the commission of this robbery, rape or abduction killed Leanne Whitlock. So that certainly seems to fit the situation in every one of those elements. Whereas on the other hand, the capital murder instruction, you have to speculate. You have to guess as to, to reach the elements of that offense. And there is also the instruction that if you have a reasonable doubt as to the grade of the offense, then you must resolve that doubt in favor of the defendant and find him guilty of a lesser offense. If you have a reasonable doubt as to whether he is guilty of capital murder or first degree murder, you shall find him guilty of first degree murder. So that,

that tells you that you, if you have a doubt, if you have a question, you have to resolve that doubt with the lesser offense. In this case, the Commonwealth has not established who did the actual killing. They have got theories about somebody had to be doing this or maybe two people would have had to pick up the rock or maybe somebody would have had to hold the person down. But those are just theories, there is nothing in the evidence to support that. They haven't established who delivered the blows to the head of Leanne Whitlock that actually killed her. You would have to go outside the evidence to say that Tommy Strickler did it. You would have to speculate that he was there doing something that there is no evidence that he was doing. And you are not suppose to go outside of the evidence. I would ask you in this case to return a verdict of guilty of first degree murder and not guilty of capital murder. Thank you.

JUDGE: Thank you Mr. Bobbitt. Mr. Ervin.

MR. ERVIN: May it please the Court. Ladies and gentlemen Mr. Bobbitt is an excellent defense lawyer. He has been in the business a long time and he does like many defense lawyers